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No. 907

In the

Supreme Court of the United States

October Term, 1966

WALTER H. PHILIPP
Petitioner,

vs.

PEOPLE OF THE STATE OF WASHINGTON, and their OFFICE OF GOVERNOR
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH COURT

WALTER H. PHILIPP
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THE ARGUS PRESS SEATTLE, WASHINGTON

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THE ARGUS PRESS — SEATTLE, WASHINGTON

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In the

Supreme Court of the United States

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WALTER H. PHILIPP, *Petitioner,* vs. PEOPLE OF THE STATE OF WASHINGTON, and their OFFICE OF GOVERNOR, *Respondents.*	No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH COURT

Walter H. Philipp, your petitioner, prays that a Writ of Certiorari issue to review the judgments of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on October 15, 1965.

OPINIONS BELOW

Pursuant to Rule 23 (1-a) of this court, the petitioner states that the Per Curiam Opinion is unreported and, thus, is printed in the Appendix B, hereto, infra page 18; that the Opinion (Denial of Petition for Rehearing En Blanc) is unreported and, thus, is printed in the Appendix A, hereto, infra page 17; that the Opinion (Order of Dismissal for Petition for Writ of Mandamus) of the United States District Court below is

unreported and, thus, is printed in the Appendix C, hereto, infra page 20.

JURISDICTION

Pursuant to Rule 23 (1-a) of this court, the petitioner state that the judgment (denial of jurisdiction to issue Writ of Mandamus) of the Circuit Court of Appeals was entered on September 9, 1965 (see Appendix B).

The Petition for Rehearing to be heard en banc (by which petitioner sought an Order for an Evidentiary hearing to be held by the District Court below to determine the allegation of denial and deprivation of his constitutional rights, privileges, or immunities by the respondent and its state officers, thus, necessitating issuance of Writ of Mandamus to preserve and protect constitutional guarantees) was denied on October 15, 1965. (See Appendix A.)

The jurisdiction of this court rests on 28 U.S.C. 1254 (1) and 1257 (3) (hereinafter more fully set forth under STATUTES, page 5), and Rules of this Court, Rule 19 (1-b): "Court's power of supervision and compliance with its interpretive decisions on constitutional provisions"; and Title 28 U.S.C. 1651 (a) "enforcement of supervisory powers to correct jurisdictional errors and issuance of writs to implement congressional authority and power to protect constitutional rights.

QUESTIONS PRESENTED
(Rule 23 (1-c)

The following questions are of great public impor-

tance because they strike at the very heart of each citizen's sense of security, each citizen's faith and confidence in his government, which he believes to be a government of laws and not of men. Each citizen believes that his government protects its citizens in their free exercise of their private, inviolate, constitutional right, privileges and immunities, as secured and guaranteed by the Constitution of the United States:

1. Whether the Government of the United States, acting through its "legislative courts," as established by Congress pursuant to Article III, Section 1, can *refuse to protect* any or all of its citizens in the *full and free exercise* of their constitutional rights, privileges and immunities, as secured by the Constitution and laws of the United States, when the affected citizens have faithfully and timely performed their contractual obligations by the full payment of all taxes levied by the Federal Internal Revenue Acts?

2. Can persons—holding office of judgeships in the "legislative courts" which are under the "control and dominion" of the Congress, pursuant to Title 28 U.S.C. 453 and Clause 2—"supremacy," Clause 3 "oath" of Article VI of the Constitution—abrogate the constitutional rights of citizens by judicial decree" without due process of law" (authority of law) in *open violation* and *defiance* of the "prohibitions" clearly mandated by the 5th and 14th Amendments, and as interpreted by the decisions of this "supervisory court".

3. Can a group of people—having organized themselves into a form of republican government and made application to the Government of the United States for a public franchise (charter for statehood), pursuant to the Congressional Enabling Act of 1889, and so granted pursuant to the execution of the Compact of 1889 with the Government

of the United States—wilfully refuse to recognize and be duty bound to the SUPREME LAW OF THE LAW—the Constitution of the United States, and laws made pursuant thereof—and, thus, ignore the provisions of the 14th Amendment, which *requires* no state shall deny or deprive any citizen of the United States "equal protection of the law"?

CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

Pursuant to Rule 23 (1-d) of this court, the petitioner sets for the authorities of law upon which he relies, namely:

The Constitution of the United States, as amended, provides:

AMENDMENT V:

"No person shall * * * be deprived of life, liberty or property without due process of law; * * *." U.S.C. 1958 ed.p. XLVI.

AMENDMENT VII:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved * * *." U.S.C. 1958 ed. p. XLVI.

ARTICLE VI, Clause 2:

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; * * * shall be the supreme law of the land; and the judges of every state shall be duty bound thereby."

AMENDMENT XIV, Section 1.

"* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." U.S.C. 1958 ed. p. XLVII.

Enabling Act of 1889, Section 4, provides:

"That the delegates to the conventions * * * after the organization shall declare, on behalf of the people of said proposed states, that they adopt the Constitution of the United States." United States Statutes at Large, Vol. 25, p. 676 (50th Congress 1887-1889).

U.S.C. 1958 ed., Title 28, Section 1257 (3) among other things provides:

"By writ of certiorari, * * * where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

U.S.C. 1958 ed. Title 28, Section 1343 (3) — Civil Rights—provides:

"The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person * * * (3) to redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States, or by any Act of Congress providing for equal rights of citizens, or of all persons within the jurisdiction of the United States."

U.S.C. 1958 ed., Title 28, Section 1651 (a) provides:

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

STATEMENT

Pursuant to Rule 23 (1-f and g) of this court, the

petitioner sets forth that he is authorized by Title 28 U.S.C., Section 1654 "to plead his own case pro se"; that the original jurisdiction of the Federal District Court (the legislative court) was invoked under the authority of Title 28 U.S.C. 1343 (3) (supra p. 5) and 28 U.S.C. 1651 (a) (supra p. 5) and pursuant to the "guide lines established by the supervisory court for the issuance of mandamus against the respondent, State of Washington," in its decision in *Louisiana v. Jumel*, 107 U.S. 711, 721, holding in part:

> "That mandamus proceedings which seek affirmative official action on the part of state officers as the performance of an obligation which belongs to the state in its political capacity, are uniformily regarded as suits against the state."

Thus, it must follow that the Enabling Act of 1889, the Compact of 1889 and the 14th Amendment of the United States Constitution did and still does bind and obligates the respondents (the people forming the state) in its political capacity, to the government of the United States to conduct a republican form of government and guarantee equal protection of the law to all United States citizens residing within its jurisdiction. Therefore, the people—the state—are the only real party-in-interest subject to any enforcement act of the Government of the United States, pursuant to its constitution and laws guaranteeing the protection of the constitutional rights of its citizens.

The Congress implemented this protection by the enactment of the above statutes, and specifically, delegated to and authorized its "legislative courts" to so

enforce the constitutional guarantees by writs, pursuant to the general legislative powers and authority of the Congress.

According to the Revised Code of the State of Washington, 43.06.010-(4), it is only the office of the governor which is the sole organ of communication between the Government of the State and the Government of the United States. Therefore, due process of law requires that said office be made a party to this mandamus action in order that the contractual provisions—the 14th Amendment, specifically, can be enforced against the respondents.

Erroneously, the District Court, below held "that it lacked jurisdiction" to enforce the congressional enactments, as cited above, to protect a United States citizen's constitutional rights, namely:

1. Right to a fair and impartial trial to prove his innocence of any wrongdoings so charged.
2. Right to confront his accusers.
3. Right to call witnesses in his defense.
4. Right to trial by a jury.
5. Right to equal protection of the law.
6. Right to a full findings of all facts and issues in genuine dispute.
7. Right to protection of constitutional rights without same being abrogated, denied and deprived "without due process of law" (authority of law)

(as required by the 5th and 14th Amendments) by state officers.

The petitioner affirmatively states *that he is innocent of all allegations of wrong-doings; that he is the victim* of a continuous conspiracy conducted by certain state officers, who have continuously administered the constitution and laws of the United States—the supreme law of the land—with an *Evil Eye* and *Unequal Hand* so as to discriminate, to deny and deprive the petitioner of his constitutional rights, as enumerated above, because he, as an auditor, exposed alleged fraud and alleged conspiracy in the administration of public franchises supervised by these *responsible* state officers of the respondent.

The state officers, as well as the individuals—holding judicial offices in the federal "legislative courts"—did ignore and virtually defy this court's interpretive 14th Amendment decision in the case of *International Shoe Co. v. State of Washington*, 326 U.S. 310, wherein this court held, in part:

> "That the due process of law clause, also, means that in the conduct of any proceedings, there shall be no offense to our traditional notions of fair play and substantial justice."

A fair and impartial examiner of the record of this case will find that the "face of the record" and the documentary evidence contained therein are "prima facie" evidence that the petitioner could not rightfully be charged with, nor did he commit the alleged wrongs; that the Summary Judgments and Orders of Dismissals

of the petitioner's related actions were granted without any Finding of Facts (which an ordinary prudent person would make), or without any consideration of the issues in genuine dispute, but all were the products of an "evil eye" and "unequal hand" administered with personal bias and prejudice against the petitioner for reason of "political expediences"; that the petitioner had exhausted all of his legal remedies within both the respondent's judicial and executive branches, with *no presently pending* actions against the respondents in the State Courts, which has been *erroneously advanced* as a bar to invoke jurisdiction of the Federal Courts.

The *petitioner purposely* cleared up all litigation against the respondent in its courts, so as to preclude such erroneous argument. Notwithstanding, that Title 28 U.S.C. 1343—Civil Rights and Elective Franchise Statute permits filing of such actions prior to exhaustion of state remedies. Presumably, that *if* the petitioner had an action on the *identical issues presented* to both Federal Courts below, presently pending before a State Court, which could *possibly determine* the *issues in the favor of the petitioner*, which, then, would negate need for federal action. Under such circumstances, acquisition of federal jurisdiction is barred pending the State Court's decision. The petitioner could not be barred from the jurisdiction of the Federal Courts, because the record and the oral arguments before the Circuit Court (see Appendix B) clearly affirm NO PENDING ACTION to bar acquisition of a Civil Rights case by the Federal Courts.

Both the Federal Courts below failed to comply with

this Court's mandates, set forth in case of *Baker v. Carr*, 369 U.S. 186, holding in part:

> "The Federal Courts are authorized by Title 28 U.S.C. 1343 (3), can and should take jurisdiction to remedy an obvious denial of equal protection of the laws guaranteed by the 14th Amendment of the Constitution."

To further compound the above gross errors, the Circuit Court's Opinion (see Appendix B) fails to cite the statutory authority by law by which it is authorized by Congress to positively "abrogate" the petitioner's constitutional rights "without due process of law" in absolute violation of the petitioner's 5th Amendment Rights and guarantees. Supra p. 4.) Thus, the Opinion has no effective force to bind the parties, pursuant to this Court's Ex Parte Young Rule. This Court held in the case of Ex Parte *Young*, 209 U.S. 123 holding in part:

> "That an official proceeding unconstitutionally, unlawfully or unauthorized manner is stripped of his official character, and, thus, his determinations are uneffectual."

The foregoing statements clearly set forth the facts material to the consideration of the questions presented. Summarily, from the above documented facts contained in the record of this case, it is obviously clear that there are justifiable grounds for the presentment of questions 1 and 2. *For the reason* that the *Government of the United States*, the respondent superior,—acting through its legislative courts and through person under employment contacts to perform all ministerial duties of the

office for the "respondent superior"—has *abrogated* the constitutional rights of the petitioner and has *refused* to protect the free exercise of said constitutional rights as guaranteed under its (government's) *citizenship contract* with the petitioner, who has paid all past and current taxes and defended this government in the Second World War under his citizenship contract with the Government of the United States. A breach of contract is involved.

For the reason that the Respondent, People of the State, the "respondent superior" — acting, likewise, through its legal agents—has breached its Compact of 1889 with the Government of the United States by denying and depriving the petitioner of free exercise of his constitutional rights while residing as a citizen of said State of Washington. Thus, raising question 3.

REASONS FOR GRANTING THE WRIT

Pursuant to Rule 23 (1-a), petitioner claims that granting of the writ to review the record of the entire case and/or to remand the case and to mandate the "legislative courts below" to hold a full evidentiary hearing to determine validity of denial and deprivation of petitioner's constitutional rights by the respondent should be ordered by this court for the following reasons:

1. That petitioner's cause of action "arises under the Constitution and Laws of the United States," thus, invoking the judicial power of this court to enforce his constitutional rights, privileges and immunities, pursuant to Article III, Section 2, of the United State Constitution. Citing this court's decision in

United States v. Cruikshank, 92 U.S. 542, 552, 553, held:

"To invoke the powers or the duties of the national government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. Every republican government is duty bound to protect all its citizens in the enjoyment of the equality of rights. That duty was assumed by the States, and remains there. The only obligation resting upon the United States is to see that the States do not deny the right. The power of the national government is limited to the enforcement of this guaranty."

2. That the petitioner invokes the "supervisory power of this court," because the Congress—acting under the "necessary and proper clause," Article I, Section 8, Clause 18, "for carrying into execution all powers vested by this Constitution in the Government of the United States—has delegated and empowered this court to issue all writs to the Circuit Courts, also, to issue writs of mandamus, pursuant to the All Writs Act, Title 28 U.S.C. Section 1651 (a) and the proof of such exercise of supervisory power is demonstrated by the following decisions of this court, namely:

Ex Parte United States, 287 U.S. 241; *United States Alkali Association v. United States*, 325 U.S. 196, 202; *Beacon Theatres v. Westover*, 359 U.S. 500, 511; *Dairy Queen Inc. v. Wood*, 369 U.S. 469.

All of these case determinations resulted in the issuance of writs of mandamus to compel the "legislative courts" to exercise their authority when it is their "ministerial duty to do so".

3. That this court shall continue to command and mandate full compliance with and obedience to the Supreme Law of the Land—the Constitution and Congressional enactments made in pursuance there-

of and within its general legislative powers—by every citizen, whether in his individual or official capacity, pursuant to its interpretive decisions, namely:

Ex Parte Siebold, 100 U.S. 371 re: duties of every citizen; *Martin v. Hunter's Lessee*, 1 Wheat 304.

"The Constitution and laws of the United States are the supreme law of the land, as mandated by Article VI "supremacy clause."

Brown v. Board of Education, 347 U.S. 483:

"A judicial decision of the United State Supreme Court, when interpreting a constitutional provision—specifically the provisions of the 14th Amendment—, is the "supreme law of the land," and Article VI of the Constitution makes it of binding effect."

4. That Congress has enacted Title 28 U.S.C. 1343 (3) (supra page 5) to protect the free exercise of the constitutional rights of every citizen, and so interpreted by this court in the following decisions, namely:

Truax v. Raich, 239 U.S. 33, 36:

"That under the Constitution of the United States, all persons within the jurisdiction of a State are entitled as of right to equal protection of the law; Congress has implemented this right, first by providing a cause of action for its enforcement, and, second, by giving the District Courts original jurisdiction over the cause of action. Citing the following authorities: USCA Section 1343 (3); 42 USCA 1983; USCA Constitution 14th Amendments as statutory authority vested in the Federal Courts to enforce the Constitution."

Shelley v. Kramer, 334 U.S. 1:

"That from the time of the adoption of the 14th

Amendment until the present, it has been the consistent ruling of this court that the action of the State to which the Amendment has reference, includes action of state courts and state judicial officials. State action, as that phrase is understood for the purpose of the 14th Amendment, refers to exertions of state power in all forms. And when the effect of that action is to deny rights subject to the protection of the 14th Amendment, it is the obligation of this court to enforce the constitutional commands." "Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."

Milk Wagon Drivers v. Meadowbrook Dairies, 312 U.S. 287, 321.

"It is of prime importance that no constitutional freedom, least of all the guaranties of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this court has the ultimate power to search the records in the State Courts where a claim of constitutionality is effectively made. To maintain the balance of our federal system, insofar as it is committed to our care, demands at once zealous regard for the guaranties of the Bill of Rights."

Gideon v. Wainwright (State of Florida), 372 U.S. 335, this court granted the petitioner Gideon a Writ of Certiorari on grounds of denial and deprivation of his constitutional rights, and ordered the respondent State of Florida to comply with the 14th Amendment and provide petitioner a new trial in accordance with the due process of law, as mandated by the 6th Amendment — "assistance by counsel."

Baker v. Carr, 369 U.S. 186. This court ordered those non-complying states to reapportion their Legislature to provide an equal vote to all voters, pursuant to the "equal protection clause" of the

14th Amendment. The respondent, State of Washington, was so affected by that decision. This court carried out the federal enforcement powers, pursuant to its decision in *re Debs*, 158 U.S. 564, holding in part:

> "That it is the power and duty of the federal government to use the entire strength of the nation to enforce in any part of the land the full and free exercise of all national power and the security of all rights entrusted by the Constitution to its care."

Therefore, pursuant to this court's Rule 19 (1-b) (supra p. 2), the exercise of this court's power of supervision over the "legislative courts below" is imperative when a federal question has been decided (or not decided), in conflict with applicable decisions of this court, as cited above, especially, when the individuals—holding a judicial office of the legislative courts—were duty bound to follow the mandates of this court, pursuant to Article VI, clause 3,—*Oath*—of the Constitution of the United States, which Congress implemented its enforcement by enacting Title 28 U.S.C. 453—Oath of Judge.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests the exercise of the power and duty of the Government of the United States to enforce the constitutional rights of the petitioner by granting this Writ of Certiorari, and, ultimately, mandating the respondent to positively guarantee "equal protection of the law" to the aggrieved, petitioning citizen of the United States, who faithfully served this nation as an American G.I. during the Second World War.

Dated this 4th day of January, 1966.

Respectfully submitted,

WALTER H. PHILIPP
Petitioner pro se

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WALTER H. PHILIPP,
Appellant,

vs.

PEOPLE OF THE STATE OF WASHINGTON, and their OFFICE OF GOVERNOR,
Appellee.

No. 19,671

Before: JERTBERG, DUNIWAY and ELY, *Circuit Judges*

ORDER

The motion for leave to file a typewritten petition for rehearsing is granted. The petition for rehearing and the suggestion for a rehearing *en banc* are both denied.

United States Circuit Judges

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WALTER H. PHILIPP, *Appellant*, vs. PEOPLE OF THE STATE OF WASHINGTON, and their OFFICE OF GOVERNOR, *Appellee.*	No. 19,671

[September 9, 1965]

On Appeal from the United States District Court for the Western District of Washington, Southern Division

Before: JERTBERG, DUNIWAY and ELY, *Circuit Judges*

PER CURIAM:

Appellant appeals from an order of the District Court dismissing his petition for a writ of mandamus against "People of the State of Washington, and their Office of Governor". We glean from the petition that appellant claims to have been denied due process of law by the courts of the State of Washington, and seeks to mandate the appellees to invoke the judicial power of the state in his behalf and insure appellant a trial by jury and a fair trial.

The petition alleges the existence of no controversy between him and the appellees. Nowhere in the petition

is it alleged that appellant is a party litigant in any cause or proceeding, civil or criminal, pending in any of the courts of the State of Washington. On oral argument appellant conceded that no such cause or proceeding is pending. Patently the petition fails to state a claim upon which relief can be granted. Furthermore it is obvious that the District Court lacked jurisdiction over the subject matter of the petition.

The order of the District Court is affirmed.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

ORDER

WALTER H. PHILIPP, *Petitioner*, vs. PEOPLE OF THE STATE OF WASHINGTON, and their OFFICE OF GOVERNOR, *Respondents.*	No. 3133

This matter having come on regularly for hearing on the 7th day of August, 1964, before the Honorable George H. Boldt, upon the petition for a writ of mandamus and respondent's motion to dismiss; petitioner represented by Walter H. Philipp, *pro se*, and Respondent State of Washington represented by John J. O'Connell, Attorney General and Hebert Gelman, Assistant Attorney General; the court being familiar with the files and records herein and having heard argument of counsel, and deeming itself fully advised in the premises; NOW WHEREFORE,

IT IS HEREBY ORDERED AND DECREED, that the petition for a writ of mandamus be and it hereby is dismissed.

GEORGE H. BOLDT, *Judge*

Presented by:

HERBERT GILMAN
Assistant Attorney General

Approved as to forme and entry without further notice:

_____

Attorney for Petitioner